

## **CAMDEN PLANNING BOARD**

### **Minutes of Meeting**

**June 8, 2011**

**PRESENT:** Chair Chris MacLean; Members Richard Householder, Jan MacKinnon, and Lowrie Sargent; Alternate Members Sid Lindsley and Nancy McConnel; CEO Steve Wilson

**ABSENT:** Member Kerry Sabanty

The meeting was called to order at 5:00 pm

#### **1. PUBLIC COMMENT on NON-AGENDA ITEMS:**

No one came forward.

#### **2. MINUTES:**

July 1, 2011 Part 1:

Page 1:

Line 17: Mr. Lookner had been referred to as Ms.

Line 23: "small wind generators but and applying..."

Line 49: "for a two-building, ~~six-unit~~ seven-unit condominium project..."

Page 2: Line 12: "...10' height over ~~street~~ Mt. Battie Street level..."

Page 3: Line 24: The word "The" was removed from the end of the line.

Page 4: Line 36: "...should not be lost to residential use."

Page 6: Line 7: The word "one" was deleted.

Page 8: Line 3: A new bulleted line was added following Line 3: "This is not applicable."

**MOTION by Mr. MacLean seconded by Mr. Householder to approve the Minutes of May 18, 2011 as amended.**

**VOTE: 4-0-2 with Mr. MacLean abstaining because he had not reviewed the draft and Ms. MacKinnon abstaining due to her absence**

#### **3. HISTORIC PRESERVATION: AMEND ARTICLE 13: PUBLIC HEARING**

It was confirmed that notices were never sent for the June 1 Public Hearing and that there had been no notice in the paper for the hearing tonight. Instead the Chair declared the meeting would be a Public Informational Session which does not need to be noticed. He and others assured the public that their comments would be considered just as if they had been received at an official Public Hearing. David Dickey pressed the Chair to say that last week's meeting was not a Public Hearing, but he did not get that answer. Instead it was made clear that a Public Hearing will be held on July 6, and that it is Planning Board policy to hold the additional public hearing - not a requirement. The Chair asked that speakers limit their time to five minutes and suggested that If time permitted, speakers could be given additional time to speak after everyone who wanted to speak had the opportunity to do so, but given the size of the crowd there may be only one opportunity to speak before the Board moves on to other business.

Mr. Householder, Chair of the subcommittee that prepared the proposed amendment, explained how the concept for the Article came about beginning with the creation of Design Standards in 2009. Those standards referenced Historic Buildings but there was no authority to enforce any of the regulations. The Planning Board decided, after repeatedly hearing comments about the desire of the townspeople to protect the character of the Town, to create a regulating ordinance.

This proposal creates a Commission with regulatory authority over existing Historic Districts and sites. The Commission has by-laws and will review changes to listed properties and issue Certificates of Appropriateness.

Tom Rothwell: owner of the Camden Deli: Camden's businesses are already highly regulated and must pay many fees; this proposal will slow down the approval time for permits and created additional fees. The Town needs a plan for growth not band aid ordinances. He asked the Board not to tie the hands of property owners who have the best interests of the citizens of the Town in mind – they need to keep them happy in order to keep their business.

David Dickey: He has repeated Mr. Householder's comment that these buildings belong to the community to other building owners and gets the same reaction: let the community pay our taxes if they own the buildings. The Board should take the buildings in the Fire District out of the ordinance – they are already protected and they don't need to be there.

Bill Dickey: Asks why the Board feels there is a need for a Commission to tell them what to do with their buildings when the owners have been doing a good job until now.

Mr. Householder addressed David Dickey's characterization of his comments at the previous meeting: What Mr. Householder had said was that the buildings are part of the character of the Town. The concern leading to the creation of the ordinance was that buildings in the Historic District could be changed so drastically that it would hurt the historic character of the Town.

Bill Dickey stated that his question had not been answered and he wanted an answer: why is the Commission necessary? Mr. Sargent offered that whenever new regulations are implemented you run into the problem that the law applies to everybody instead of just to those who will break them. This ordinance is not intended to be a restriction and the Commission is not being created to tell people what to do: the question was how to maintain a good downtown and this is one way to approach that goal.

Joyce Lawrence: She did not receive any information on this meeting. She related her experience with a Historic Commission in Concord, Massachusetts: it was not good. They simply wanted to upgrade the façade of their building with an awning and had to fight with the Commission to be able to do so.

Bill Dickey insisted again that his question had not been answered. The Chair responded that the Board is having a debate and conversation about where to draw the line in a policy decision. All Zoning Ordinances regulate the use of property – they limit property rights. The Historic Preservation issue is another infringement and the people of Camden will have to answer whether or not they want to take that step. The matter is being discussed. The threat of Dunkin' Donuts coming to Main Street is what started this discussion with people asking what Camden should look like. Something will happen someday that people don't like if there isn't an ordinance.

Ms. MacKinnon suggests that people look at it from the perspective that it protect "your property" and "your investment". She has mixed feelings about infringing on property rights, but she is also tired of moratoriums, like the one to stop Dunkin's Donuts, running the Town. It is no way to do business.

Stuart Smith: Property owner: He appreciates the concept of protecting an “image”, but he has many concerns about this draft: there are many nebulous definitions and terms that aren’t defined such as “material change to the appearance”. The Board needs to define the problem before they can find the answer. He wants the appearance of buildings to mesh, but he is frustrated to find the proposed solution is one more layer of bureaucracy on the businesses in Town. He thinks the creation of a new Commission is a mistake. The Town doesn’t need another board to do the Planning Board’s business of review – make the changes part of the Zoning Ordinance and give the responsibility to the Planning Board.

He gave some examples of how he thinks the proposal goes wrong:

Rite Aid: When Rite Aid came in they tore down what had been the old A&P grocery store – an ugly building. Did the Town value that property or were they glad to see it go? Do most people think the new building is an improvement? The new Ordinance wouldn’t permit that to happen.

Dunkin’ Donuts could still come to Town – they may look different but if they did what Rite Aid did, they could still come: so maybe this ordinance won’t prevent what people wanted prevented.

Are changes always bad? Will “ugly” have to be maintained just because it is “historic”? Does the Camden Deli look a lot better than the old Nash’s Market? He thinks so. He doesn’t think this proposal will achieve what the Planning Board says they want to achieve.

He also has concerns about how long it will take to get through the process. What if he wants to change an entry from a single door to a double door? Is that a material change? What if he wants to change the awnings at his hotel entrance? Will that need review? He thinks this adds a significant level of bureaucracy without accomplishing the goal.

Meg Quijano: Property owner: She has concerns about the “Certificate of Appropriateness” and finds the term offensive – where did it come from and who will decide what is meant by “appropriate”? Mr. Householder responded that the term is one used by the Maine Historic Preservation Commission.

Sam Smith: Property owner: Thinks that good points have been made, especially about the level of bureaucracy that is being created. It will make the process of improving a building more cumbersome than it should be and the time frames will limit what property owners will do. Historic Preservation is a good idea, but it is tricky to make it work.

Janis Kay: She did not receive notice and neither did the owner of the Village Restaurant property. She supports Stuart Smith’s comments and says they apply to all property owners. She was surprised to see this issue coming up again. She thought it had been resolved when the Board’s representatives met with the Downtown Business Group (DBG). What is the problem that needs to be fixed this time?

Mr. Sargent responded by saying that discussion with the DBG was about the original Design Standards; the Board listened to the group’s concerns and made those standards voluntary. He wonders if everyone understands that this ordinance will apply only to those privately owned buildings in the Historic Fire District; nowhere else in Town will it apply to private property.

Todd Anderson: Property owner: Zoning Ordinances may affect property rights, but they can be followed; a property owner can read the rules and understand what he can and cannot do. A property owner cannot follow rules that are vague: terms like character, color that must be “visually related” to adjacent buildings – there is too much vagueness, and that will give the Commission too much that they can decide.

He believes that Dunkin’ Donuts is not an example of why we need this ordinance, but is an example of why we don’t: the Town took care of that problem.

Mr. Householder noted again that the Board kept hearing from the public during the discussions resulting from the Dunkin’ Donuts moratorium that they wanted the Board “to protect the character of Camden” – that is what they have tried to do.

Etienne Perret: Following on what Stuart Smith said, he asked the Board to take a look at the real history of the area: there was fuel and coal being stored and sold from property on Bayview Street: is it good that has changed? Do we want to go back to the real historic character of the area when there was a garage on Bayview Street and an anvil factory? Anyone who buys a building in Camden these days has a huge investment – probably a minimum of a million dollars or so – and they need to protect that investment. They’ll do that by keeping the quaint character or they will be driven out of business by townspeople who won’t do business with them. He believes that the continuing addition of more and more regulations has not kept the Town the way it should be and is not business friendly: the parking regulations are one example; they limit the ability of businesses to expand or change. Many of the regulations make it not convenient to do business here: rules like those for signage mean that there are signs that cannot be effective.

He also doubts the ability of the Commission to be wiser than the property owner when it comes to making decisions.

Lynn O’Hara: She would be the one in her family to ready the stuff for a review and to time the work to be done; the proposal adds too much time. Mr. Sargent noted that the Board is preparing a time-line for business owner’s to see. Ms. O’Hara responded that all times frames will be too long a time frame for business owners – especially when there are so many spaces available for rent and you can’t afford to lose a prospective tenant. She related the story of having to add a door onto the façade of a Mechanic Street building when a space was suddenly available to divide in two. There was no way she could accommodate the renter’s time frame is she had to go to review to divide that space.

Ms. MacKinnon reminded people that the rules will not apply to interiors, but Etienne Perret noted that last year there was a new set of rules and this year another proposed. He wonders how long before a proposal is made to include interior spaces.

Brian Hodges: Camden’s Economic Development Director: He recently attended a conference on revitalizing downtowns, and the upside to this proposal is that it could make funds available for projects involving these buildings. He referenced the Certified Local Government Grants that are available for rehabilitation and restoration of properties covered by a certified Historic Preservation ordinance. He noted that Camden’s access to other grant monies like the ones received by Belfast and Rockland is not there because of the income level of the residents. He noted that Town-owned property is eligible to receive funding as well as privately-owned property, but he did not have figures on what level of funding was available to share among the

ten eligible towns. He did know that the funds are not shared equally, but that decisions are made on a project-by-project basis annually in October.

Mr. Sargent stated that he is frustrated when he hears business owners say “if only” that rule weren’t in place it would help businesses in Town – but they never are specific about what “that rule” is. It would be very helpful to the Board if business owners – either alone or together – would come up with a specific list of problems they see caused by the Ordinance. What are the *real* problems?

Mr. Householder responded to a question about how the public can get copies of the proposal with changes and informed the public that the proposal will go to the July 6 Public Hearing just as it is this evening. Stuart Smith said he found that frustrating – even after all the comments the Board has heard this evening they won’t be making changes. Mr. Householder explained that once notice has been given of a Public Hearing that the document that is going to be heard cannot be substantially changed. That doesn’t mean that changes won’t be made, but they won’t be made before July 6.

After seeing that no-one else wanted to speak, the Chair closed the Public Input phase of the meeting and asked the Board for comments:

Mr. Lindsley: Wants the time-line that has been promised. He believes it should show the “least” amount of time a review could take and the “most” amount of time.

Ms. McConnel: She is torn by her firm commitment to her belief that it is “hands-off” when it comes to the rights of private property owners and her desire to see the Town to remain historically significant. She also questions the need for a Commission and wonders if the voluntary Design Standards aren’t enough in themselves to accomplish the purpose.

Mr. MacLean: Does not want to do anything that will harm businesses or hinder economic development, but he is not sure this proposal will do that. He was first attracted to this proposal because of the eligibility for grant monies that would come with approval. But, he doesn’t want to ram anything down the throats of business owners who will be impacted, and is thankful for all the input the Board received this evening; it is very important for him to hear concerns.

He invited everyone here this evening to come back to the Public Hearing on July 6 and to bring others as well; this level of public participation is welcomed.

#### **4. SUBDIVISION: Minor Subdivision and Site Plan: Pre-Application Meeting Riverside Subdivision: Map 113: Lot 84-1: River Business District (B-R): Mount Battie Street**

The notices to abutters for the Public Informational Meeting (PIM) had not been sent prior to the meeting of June 1 as required by the Ordinance. Notice of this evening’s meeting was mailed on Thursday June 2<sup>nd</sup> and the CEO reported that second notices will be sent prior to Final Plan approval. One abutter, Karen Betz, was present to learn about the project and reported that she had received the notice but she was not sure when it arrived. The Chair is bothered by the short notice time frame, but the Board cannot hold up the Applicant and must move forward with hearing the Application.

The Applicants (Paul Cartwright, Mark Durbin and Jeff Wolovitz) were represented by their agent, Tom Fowler, P.E., Landmark Corporation. Mr. Fowler wanted the PIM to be held this evening as planned, and referenced the option in the Minor Subdivision Final Plan procedure for a Public Hearing. The hearing can be required by the Board if there is significant public interest or if there is a request for a hearing. If a Public Hearing is scheduled prior to Final Plan Approval abutters who could not come this evening would have the opportunity to speak at that time.

#### *Street Level Issue*

Mr. Fowler drew the Board's attention to changes made to the proposal with regard to the requirement for commercial space at street level in this District: the Applicants decided to put commercial space in each building to resolve the outstanding issue.

#### *Public Informational Meeting:*

Mr. Fowler gave Ms. Betz a detailed overview of the project. She responded by saying that this was a pretty property and that she hoped whatever is done there is done with great thought. Mr. Fowler replied that his clients put a great deal of time and thought into choosing the best location for the buildings with the goal of keeping as much of the property undeveloped as possible. Although she had no questions at this time, she will attend the next meeting to learn more. The Chair asked if Ms. Betz was requesting a Public Hearing and she replied in the affirmative.

#### *Questions from the Board:*

Mr. Householder:

Did the changes in Building #2 in adding a commercial space change the total number of residential units? Mr. Fowler: The total number of residential spaces remains the same with three in each building.

Will the building (#2) will be taller to accommodate the change? Mr. Fowler: It will, but the height of the roofline over the hillside will remain the same – they will just set the building further into the slope.

Will there be two commercial spaces or three? Mr. Fowler replied that the decision has not yet been made whether or not to keep two commercial units in Building #1 or make that just one unit.

Will the parking area be changed to accommodate the commercial use at Building #2? Mr. Flower replied that it depends on what business will be located in Building #2 – it may not be necessary to make any change.

Ms. MacKinnon: Wouldn't putting any commercial use in that building require a paved area up to the access? Mr. Fowler replied that it depends on the business and that decision hasn't been made.

Mr. Householder:

He visited the site and found that the grade begins to rise immediately from Mr. Battie Street, yet the presentation made said the grade of the parking area and the access to Building #1 will be at street level. Mr. Fowler explained that the details of the grading will be fleshed out with the Final Plan, but there will be sufficient grading done to make that access the same grade level as the street.

Noting the significant grade over the building site reinforced Mr. Householder's concern about storm water coming off the site with considerable force and he wants to see how that water will be taken off the drive. Mr. Fowler replied that there are several steep drainage channels on the site now but that none of them will be directed toward the road. The site will have both temporary and permanent erosion control – every effort will be made to control storm water.

Ms. McConnel:

She still has concerns with the proposal to place a parking lot in the wetlands, especially given the slope of the land and the amount of water these wetlands handle as part of the natural drainage system. They serve a good purpose and she wonders if there is not another site, a better site, for parking. Mr. Fowler replied that the nature of wetlands means that they are already at capacity to handle drainage; it is possible to impact wetland and still keep their function intact. These wetlands are part of a drainage path that serves other properties as well; they have considered other locations for the parking and will look again to see if there is a better option. However, it is also very important to the Applicants to keep the land intact as much as possible and that is why this location was chosen.

Will the buildings will be visible from the lots in back? Mr. Fowler replied that they will; the hillside hardwoods that will remain after clearing for construction won't provide sufficient cover – not like evergreens would.

Will the food operation cause odors? Mr. Fowler replied that he doesn't think so; the operation will be located 90' from the nearest corner of the second building and 115' from the nearest existing house.

Mr. Fowler asked to explain how he arrived at believing that the requirement for commercial space applied to Building #2 after first arguing that it did not. Essentially it comes down to the fact that the way the definition of Street Level is crafted, Item #4 means it applies here: Exhibits "g" and "h" say there has to be some way to get to the building even if there is no public pedestrian way and show that the requirement applies. However, the real reason the proposal was changed is because the Applicants wanted to honor the intent of the Ordinance and the purpose of the commercial space requirement to encourage mixed use.

The Chair asked the Board whether or not the proposed change means that the Plan now complies with the requirements of the Preliminary Plan; they found that it did.

The Site Walk will be held on June 14, 2011 at 7:15 with the parties meeting at the Town's pump station where there is parking.

Mr. Fowler looked at the Ordinance and Appendix B, Minor Subdivision Final Plan Submission Requirements and found there was a requirement at 1(m) for: "A performance guarantee meeting the requirements of Article 10." Yet in Article 10 there is this: "Section 1. Performance Guarantee Required: The Final Plan shall be accompanied by a performance guarantee, or, at the sole discretion of the Planning Board, a conditional agreement. Performance guarantees are not required for minor subdivisions." Which is it? If the requirement applies they cannot deed over a lot because there are no lots in this condo development. Will they have to submit the guarantee?

The Chair feels that the discrepancy might mean that it is not mandatory that the requirement apply and the Board would have the discretion to require the guarantee or not; or it could mean that the requirement does not apply. He would have to know the intent in order to make a decision. The Board cannot condition approval in this instance, but they could if the work were to be done in phases; phasing would reduce the amount of a guarantee. Mr. Fowler does not yet know how expensive the work will be – those calculations have not yet been done.

For the record it was clarified that the Board made no decision this evening on whether or not to require a performance guarantee. Mr. Fowler said the cost of providing this guarantee would affect the final decision on how the project will proceed.

#### DISCUSSION:

1. There were no Minor Field Adjustments

2. *Planning Board Interest Form*

See attached copy of the revised draft.

3. *Planning Board Attendance Policy*

See attached copy of the revised draft.

**MOTION by Mr. Sargent seconded by Mr. Householder to adopt the Informational Interest Letter and the Planning Board Attendance Policy as revised.**

**VOTE: 6-0-0**

There being no further business before the Board they adjourned at 8:30

Respectfully submitted,

Jeanne Hollingsworth, Recording Secretary



Thank You for your interest in serving on Camden's Planning Board!

Because ~~none of the other Boards or Committees of the Town~~ the Planning Board requires ~~quite the same~~ a significant level of commitment in terms of time and effort ~~as does serving on the Planning Board~~, we have developed this check-list to help citizens considering applying for a seat on the Board understand exactly what is required to become a productive member of the Planning Board.

Prospective members should be prepared to:

- Attend as many meetings as possible of the Board during their tenure. The Board has a voluntary Attendance Policy, a copy of which is attached here, and serious consideration should be given to whether or not any applicant is willing to commit to this policy before they seek appointment to the Board. This level of commitment continues year-round, so members of the public who travel or who are absent for a good portion of the year may want to consider service on a different board or committee where regular attendance is not so important.
- Become familiar with the Comprehensive Plan, the Zoning Ordinance, Site Plan Review and the Subdivision Ordinance (all are available to review on the Town's website at <http://town.camdenmaine.gov>);
- Develop the technical skills necessary to read blueprints and site plans and gain the expertise needed to apply this information during review of applications. There is often a great deal of pre-meeting preparation required prior to the Board's review of applications, and prospective members must be willing to make a commitment to come to meetings familiar with the various agenda items;
- Understand the function of Town Government and how the various committees and boards interact relevant to Planning Board responsibilities in applying, and amending, the Plans and Ordinances noted above;
- Be comfortable speaking in a public forum that is often televised; and
- Be very confident that they can follow ordinances and conduct reviews without letting their personal beliefs interfere. Applicants should be aware that the procedures of the Planning Board are quasi-judicial in nature and that the Board's decisions on applications are subject to review by the Appeals Board and/or the courts. Members must be prepared to recuse themselves when conflict exists, and they must remain objective, acting without prejudice, during the entire process of review.

Members of the Board are happy to speak with prospective members about the Board and to answer any questions. Thanks again for your interest.

Chris MacLean, Chair  
Camden Planning Board

## *Planning Board Attendance Policy*

Purpose:

~~Members are expected to voluntarily adopt the Planning Board's Attendance Policy for the purpose of:~~

- Ensuring a quorum of members will be present to conduct the Board's business;
  - Promoting fair, informed and expeditious review of applications;
  - Providing for the full benefit of a variety of viewpoints and opinions in deliberation and discussion;
  - Using each review and discussion as an opportunity to become familiar with the details and complexities of Camden's Zoning Ordinance and Comprehensive Plan;
  - Distributing equitably among members the assignments to subcommittees, attendance at outside workshops, and the work involved in special projects assigned to the Board;
- and
- Promoting good will among members.

This non-mandatory policy is as follows:

1. Planning Board Members are expected to attend ~~each~~ all meetings and site walks ~~which begins promptly at 5:00 pm on the first and third Wednesdays of each month.~~
2. Absences due to illness, accidents, family emergencies or similar unanticipated situations are excused. Absences not due to illness, accidents, etc., are generally not excused. When possible, members should ~~call~~ inform the Code Office and the Chair prior to the meeting ~~to inform the CEO~~ that they will not be attending.
3. ~~Absences not due to illness, accidents, etc., are generally not excused.~~
3. A member is granted no more than three unexcused absences in a year after which the Chair may ask the member for a re-commitment to adhering to this policy.
4. If a member continues to be absent without excuse or explanation the Board as a whole may vote to:
  - Request that the member consider submitting his or her resignation to the Select Board so a new member, committed to serving the public as a fully participating member of the Board, can be appointed; or
  - Recommend to the Select Board that the member not be reappointed to the Board.

z.